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FIRST GENERAL COUNSEL'S REPORT

Pre-MUR: 455

SENSITIVE

DATE SUBMISSION RECEIVED: October 29, 2007¹
SUPPLEMENTAL SUBMISSION RECEIVED: Dec. 14, 2007
DATE ACTIVATED: December 27, 2007

EXPIRATION OF SOL: May 17, 2008 – Sept. 5, 2011²

SOURCE: Jacobs Engineering Group, Inc./Edwards and Kelcey, Inc.

RESPONDENT: Jacobs Engineering Group, Inc./Edwards and Kelcey, Inc.

RELEVANT STATUTES 2 U.S.C. §§ 437g(a)(5)(B) and 437g(d)
2 U.S.C. §§ 441b(a) and 441f

INTERNAL REPORTS CHECKED: Disclosure reports

FEDERAL AGENCIES CHECKED: None

I. INTRODUCTION

Jacobs Engineering Group, Inc. ("Jacobs") reports that four employees of Edwards and Kelcey, Inc. ("EK"), a corporation it recently acquired, made contributions to various federal political and candidate committees from 2003-2006, which were then reimbursed by EK in violation of the Federal Election Campaign Act of 1971, as amended (the "Act"). Based on the information provided, we recommend the Commission dismiss the case and admonish EK and the four employees who were reimbursed for their federal political contributions.

¹ Additional information and documents were received from counsel in March and April 2008.

² Six federal political contributions made by Edwards & Kelcey employees were subsequently reimbursed by the corporation between May 17, 2003 and September 5, 2006.

II. FACTUAL BACKGROUND

Jacobs Engineering Group, Inc. is a publicly traded corporation that describes itself as a broad-based technical professional consulting firm. In early 2007, Jacobs was engaged in discussions to acquire Edwards and Kelcey, Inc., a privately held engineering services firm. As part of its due diligence, Jacobs discovered that EK had apparently reimbursed employees for federal political contributions in violation of the Act. The transaction to purchase EK by Jacobs was completed on April 11, 2007.

Following the discovery of the reimbursed contributions, EK asked its outside accountants, WISS & Company LLP ("WISS") to perform an audit of certain EK records. WISS identified the following six contributions totaling \$1,800 made by four EK employees for which those employees submitted EK Expense Reimbursement Forms requesting reimbursement for the contributions:

CONTRIBUTOR	JOB TITLE	DATE	AMOUNT	RECIPIENT
Carrino, Dominic B	Engineer	03/21/04	\$300	Pascrell, Jr. for Congress
Carrino, Dominic B	Engineer	05/13/05	\$250	Kennedy for Senate
Carrino, Dominic	Engineer	06/30/04	\$500	DSCC
Fish, David	Consultant	10/26/05	\$250	Gilchrest for Congress
Marshall, Kenneth	Engineer	10/29/06	\$250	Elijah Cummings
McMahon, Brian	Engineer	05/17/03	\$250	Sweeney for Congress
TOTAL			\$1,800.00	

There does not appear to be any evidence that the employees attempted to hide or conceal the reason for the reimbursements.

Given evidence of other political contributions made by EK employees obtainable through the Commission database, we asked Jacobs to determine if forty additional contributions were improperly reimbursed. EK Expense Reimbursement Forms were reviewed for the relevant time periods to determine if reimbursements had been either requested or received. No additional reimbursements

1 were found. Counsel for Jacobs interviewed the EK employees still employed by EK who received
2 the impermissible reimbursements and current EK employees "with any knowledge of the events in
3 question." Counsel also reviewed the WISS audit reports and interviewed the auditor responsible for
4 their preparation. It is Jacob's conclusion that the six EK corporate reimbursements acknowledged [redacted]
5 [redacted] "were made through administrative sloppiness, lack off [sic] training, and
6 lack of EK corporate guidelines."

7 According to its submission, Jacobs has taken steps to ensure that recently acquired EK
8 employees, and other Jacobs employees, are educated in the applicable election laws. For example,
9 each year Jacobs requires its employees, including EK employees, to reaffirm in writing that they
10 understand and will comply with the Jacobs Business Conduct Policy, which includes a section
11 explaining the laws regarding political contributions. This reaffirmation last took place in September
12 2007. Jacobs also now requires that all employee expense reports be submitted electronically to an
13 audit team that follows written guidelines for reimbursement that include instructions not to reimburse
14 political contributions.

15 Furthermore, the individual who was improperly reimbursed and is still employed by EK has
16 been instructed to reimburse the company for the amount involved. Neither Jacobs nor EK have
17 contacted the political committees to inform them of the impermissible contributions, and we have no
18 information suggesting that the political committees are aware that the received contributions were
19 reimbursed.

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1 **III. ANALYSIS**

2 EK appears to have violated 2 U.S.C. §§ 441b(a) and 441f by making impermissible
3 contributions from 2003 to 2006 in the names of others.³ The Act defines "contribution" as anything
4 of value made by any person for the purpose of influencing any election for federal office. 2 U.S.C.
5 § 431(8)(A)(i). Under the Act, corporations are prohibited from making contributions or expenditures
6 from their general treasury funds in connection with any election of any candidate for federal office
7 and corporate officers are prohibited from consenting to such contributions. 2 U.S.C. § 441b(a). The
8 Act also provides that no person shall make a contribution in the name of another person or knowingly
9 permit his or her name to be used to effect such a contribution, and that no person shall knowingly
10 accept a contribution made by one person in the name of another person. 2 U.S.C. § 441f.⁴

11 Jacobs acknowledges that the reimbursement by EK of contributions made by employees
12 appears to be a violation of the Act. While the Commission could make reason to believe findings and
13 seek civil penalties from both EK (now a subsidiary of Jacobs) and the four individual contributors,
14 there are reasons not to pursue this matter. It appears that all reimbursed contributions have been
15 disclosed and that Jacobs/EK has engaged in sufficient subsequent remedial measures to ensure this
16 type of activity does not recur. Given the contributors' lack of sophistication with the Act, their lack
17 of an attempt to disguise the contributions and requests for reimbursements, and the amounts involved,
18 we believe the most prudent course of action and the most efficient use of the Commission's resources

³ _____ all contributions were made and reimbursed before Jacobs acquired EK in 2007.

⁴ The Act also addresses violations of law that are knowing and willful. See 2 U.S.C. §§ 437g(a)(5)(B) and 437g(d). The knowing and willful standard requires knowledge that one is violating the law. *Federal Election Commission v. John A. Dramesi for Congress Committee*, 640 F. Supp. 985, 987 (D. N.J. 1986). A knowing and willful violation may be established "by proof that the defendant acted deliberately and with knowledge that the representation was false." *United States v. Hopkins*, 916 F.2d 207, 214 (5th Cir. 1990). An inference of a knowing and willful act may be drawn "from the defendant's elaborate scheme for disguising" his or her actions. *Id.* at 214-15. We have uncovered no information indicating any attempt to conceal either the contributions or the reimbursements, nor any other activity that might be considered knowing and willful conduct in this matter.

1 would be for the Commission to exercise its prosecutorial discretion and dismiss this matter with
2 admonishments to EK and the four employees pursuant to *Heckler v. Chaney*, 470 U.S. 821 (1985).

3 The federal political committees that received contributions from EK employees between 2003
4 and 2006 have not been notified of their receipt of impermissible contributions. Under the Act, no
5 person, including a political committee or a candidate, may knowingly accept or receive a corporate
6 contribution. 2 U.S.C. § 441b(a). At this time, there is no information that any of the political
7 committees had any knowledge that the contributions they received from the EK employees were
8 made with corporate funds. Accordingly, we make no recommendation regarding the recipient
9 committees. However, we will have informal communications with Jacobs and request that it contact
10 the recipient committees, inform them of the impermissibly obtained contributions, and request the
11 committees disgorge the relevant amounts to the U.S. Treasury.⁵

12 **IV. RECOMMENDATIONS**

- 13 1. Open a MUR;
- 14 2. Dismiss with admonishment the allegation that Jacobs Engineering Group/Edwards
15 and Kelcey, Inc. violated 2 U.S.C. §§ 441b(a) and 441f;
- 16 3. Admonish Dominic B. Carrino, David Fish, Kenneth R. Marshall, and Brian
17 McMahon regarding seeking and obtaining corporate reimbursement of federal
18 political contributions;
- 19 4. Approve the attached Factual and Legal Analysis;
- 20 5. Approve the appropriate letters.
- 21
- 22
- 23

⁵ Furthermore, the admonishment letter to Jacobs/EK will also reference contacting the political committees and making the same request, if Jacobs/EK has not already done so.

6. Close the file.

Thomaseia P. Duncan
General Counsel

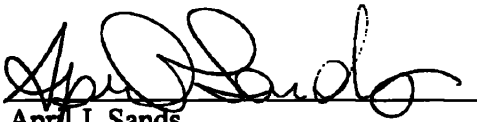
BY:



Mark D. Shonkwiler
Acting Deputy Associate General Counsel



Sidney Locke
Assistant General Counsel



April J. Sands
Attorney

Date

4/25/08

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